

The Equal Access Act Review Sheet

- Became law on **August 11, 1984**.
- Passed in the **Senate** with a vote of **88-11** and the **House of Representatives** with a vote of **337-77**.
- Applies to **public secondary schools** that:
 - Receive federal funding
 - Have a "limited open forum"
- Primary purpose of the Equal Access Act as originally implemented:
 - End discrimination against religious speech in public schools
 - Congress noted that there was a constitutional prohibition against government endorsement of religion
 - Congress felt that non-school-sponsored student speech - including religious speech - should not be removed from public schools
- Was upheld as constitutional by the United States Supreme Court in an 8-1 decision in the case of *Board of Educ. of Westside Community School v. Mergens* in 1990.
- Three basic concepts in the act:
 - **Nondiscrimination** - Secondary schools are required to treat all non-curricular student-initiated groups and activities equally.
 - **Student-initiated and student-led** - In order to qualify for protection under the Equal Access Act, groups and activities must be student initiated and led.
 - **Local control** - The Equal Access Act does not limit the ability of a school to maintain discipline and order to protect staff and student well-being.
 - Faculty may be present to ensure the safety of students and property, but may not actively participate.

Two major cases cited when discussing the Equal Access Act:

--[*Board of Educ. of Westside Community School v. Mergens*](#) – Supreme Court ruled that the Equal Access Act (EAA) was constitutional by stating that non-curricular clubs but must be given equal treatment under the "limited open forum" standard applied in the EAA. Supreme court also stated that school could limit activities that "substantially" interferes with orderly conduct. It was established that the EAA does not violate the establishment clause as it does not serve a religious purpose.

--[*Boyd County High GSA v Board of Education*](#) – The case expanded the Equal Access Act beyond religious clubs to groups that included Gay-Straight Alliances, as well as others that fit under this act. (It is interesting to note that this case spawned a follow-up case [*Morrison v. Board of Education of Boyd County*](#). In this case a Christian student sued the Board of Education for infringing upon his First Amendment right of free speech. He argued that the code of conduct restricted his right to express his belief that homosexuality was a sin. Both a federal district court and the 6th Circuit Court of Appeals ruled for the district, stating that Morrison was never punished under the code and therefore had no legal injuries. The district's code was later amended to allow for opinions such as Morrison's to be expressed, so long as they were not defamatory or inflammatory. Morrison appealed to the U.S. Supreme Court which declined to hear the case.)

Vocabulary to Know and Understand:

"Limited Open Forum": U.S.C. §20 4071(b) A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more non-curriculum related students groups to meet on school premises during non-instructional time.

Non-Instructional Time: U.S.C. §20 4072(4) The term "non-instructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

Meeting: U.S.C. §20 4072(3) The term "meeting" includes those activities of student groups which are permitted under a school's limited open forum and are not directly related to the school curriculum.

Sponsorship: U.S.C. §20 4071(2) The term "sponsorship" includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.

Non-Discrimination: If the school lets any group and/or club meet that is not directly related to the school curriculum, it is required to treat ALL groups equally. It cannot discriminate on the basis of religion, politics, philosophy, etc.

Student Initiated: Meetings must be initiated by the students and not state-initiated or state-endorsed.

Local Control: Schools are not limited in authority needed to maintain order and discipline or to protect the well being of students and/or faculty. Also, a faculty member may be present for any and all meetings to ensure safety for the students and school property- BUT said faculty members are NOT to participate in the activities.